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ORIGINAL

January 30, 2001

EX PARTE

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room TW-A325  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Dkt. No. 96-98/UNE Remand Order

Dear Ms. Salas:

Several parties have requested that the Commission reconsider its holding in the UNE Remand Order that incumbent LECs need not provide unbundled local switching in certain circumstances.<sup>1</sup> As the Commission is aware, Allegiance Telecom, Inc. ("Allegiance") believes that the current carve-out is both underinclusive and overly difficult to administer. Accordingly, Allegiance hereby submits that the Commission should find that competitive LECs without access to unbundled local switching are not impaired in their ability to serve *any* business customers in *any* metropolitan statistical areas ("MSAs") in which four or more CLECs have deployed switches, provided that the incumbent LEC provides nondiscriminatory access to the enhanced extended link, or "EEL."<sup>2</sup> This differs from the Commission's holding in the UNE Remand Order in three ways: (1) it expands the scope of the rule from the top 50 MSAs to any MSA in which the incumbent can demonstrate the presence of four CLEC switches; (2) it replaces the four line limitation with a residential-business split; and (3) it extends the exception to the entire MSA, not just density zone 1. As demonstrated below, this standard is both well-supported in the record and is administratively simple to apply.

<sup>1</sup> Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696, ¶ 278 (1999) ("UNE Remand Order").

<sup>2</sup> Under this proposal, use of the EEL must continue to comply with the standard articulated in the Commission's supplemental order in this docket, pending further action by the Commission. See Supplemental Order Clarification, 15 FCC Rcd 9587, ¶ 22 (2000).

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At the same time, Allegiance recognizes that the Commission has expressed concern about the possible anticompetitive effects that the cost and delay associated with obtaining collocation might have on the scope of switch-based competition. In particular, there appears to be some concern that the cost and delay of obtaining collocation and the practical problems associated with relying on the EEL may limit CLECs using their own switches to providing service only in the most densely populated areas of an MSA. To the extent that these concerns remain, Allegiance alternately suggests adding a second prong to the four CLEC switch standard. Specifically, the Commission could additionally require that at least 50% of the serving wire centers in an MSA have four or more collocated CLECs. This additional prong would alleviate any remaining concerns associated with using an MSA as the relevant geographic area.

**I. Allegiance's Proposed Standard Properly Balances The Act's Pro-competitive Goals With Its Deregulatory Intent.**

**A. The Presence Of Five Providers Of Switching Services In An MSA Demonstrates That CLECs Are Not Impaired In Their Ability To Offer Services To Any Business Customer.**

In order to determine whether a CLEC is impaired in its ability to offer a service absent access to a network element, the Commission has determined that it is appropriate to "consider elements available from all sources, including those elements available from third-party suppliers and through self-provisioning." UNE Remand Order ¶ 56. Under Allegiance's proposal, ILECs would not be relieved of the duty to offer access to unbundled local switching for business customers until there are at least five providers -- or, stated differently, four alternative providers plus the incumbent -- of local switching services in an MSA. Of course, as the Commission well knows, any attempt to pinpoint a certain number as being the line at which a significant shift in regulatory treatment occurs is subject to attack as being over- or underinclusive. See id. ¶ 294. Nevertheless, the Commission found in the UNE Remand Order that the presence of four CLEC switches serving a particular customer class in a defined geographic area showed that CLECs serving that market were not impaired without access to unbundled switching. See id. ¶ 280. This standard is reasonable, and it should continue to be applied as the trigger for eliminating unbundled switching for a particular class of customers in a particular geographic area.

**B. Instead Of A Four Line Restriction, The Commission Should Draw The Line Between Business And Residential Customers.**

In the UNE Remand Order, the Commission found that "to the extent that the market shows that requesting carriers are generally providing service in particular situations with their own switches, we find this fact to be probative evidence that requesting carriers are not impaired without access to unbundled local circuit switching." See id. ¶ 276. Since the Commission's decision in that order, several commenters, including Allegiance, have submitted evidence that business customers with fewer than four lines are being served by carriers using their own switches. Evidence has also been presented that carriers are providing service to business customers using hot cut loops for single line orders in remarkably large numbers. Furthermore, the record shows that, where unbundled switching is available, CLECs use it almost exclusively for serving residential customers. This evidence demonstrates that, in geographic areas served

by four or more CLEC switches, unbundled local switching need only be made available to CLECs serving residential customers.

The record clearly demonstrates that CLECs are providing service to small business customers using their own switches. Allegiance has submitted evidence indicating that approximately 32% of its customers, all of whom are served by Allegiance's own switching facilities, have one or two lines.<sup>3</sup> In addition, both SBC and Verizon have submitted evidence showing that the largest number of hot cuts that they perform is for small business customers that are migrating to CLEC switches. Of Verizon's hot cuts, approximately 80% are for customers with three or fewer lines.<sup>4</sup> Similarly, from March to May 2000, 59% of Southwestern Bell's hot cuts were for CLEC customers with a single line; 12% were for CLEC customers with two lines; and 8% were for CLEC customers with three lines.<sup>5</sup> From April to June 2000, 69% of Pacific Bell's hot cuts were for CLEC customers with one to three lines; and for a sample 10 day period in June 2000, 70% of Ameritech's hot cuts were for CLEC customers with three or fewer lines. See *SBC Ex Parte* at 3-4.

Verizon also submitted data (under seal) demonstrating that "[e]ven in states where there are no (or minimal) UNE-P arrangements (e.g., NH, RI, NJ, MD, VA, DE, DC) Verizon has experienced significant small and medium business line losses to competitive providers."<sup>6</sup> Similarly, year to date September 2000, Verizon reports that Verizon-East had lost more than 320,000 business lines for customers with fewer than 20 lines and that more than 40% of those

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<sup>3</sup> See *Verizon and SBC v. ASCENT and PACE, Local Circuit Switch UNE Carve-Out Debate* at 87 (FCC Nov. 17, 2000) ("Tr."). Birch has attempted to convince the Commission that, without unbundled switching, it is not economically feasible to serve customers below the DS1 level. In so arguing, Birch has urged the Commission to discount Allegiance's success with serving customers below the DS1 level because, according to Birch, Allegiance's average number of lines per customer is 10. See *Ex Parte* Letter from Albert H. Kramer, on behalf of Birch, to Dorothy Attwood, at 10 (Jan. 17, 2001). In fact, Allegiance submitted further data during the debate that 87% of its customer base has from 1-10 lines, and that, as noted, 32% had 1-2 lines. Tr. at 87; *Ex Parte* Letter from Mary C. Albert, Allegiance, to Magalie R. Salas, FCC, Attachment (Nov. 21, 2000) (attaching chart referenced in transcript). Regardless, even according to Birch's own data, it is clear that Allegiance is serving customers well below Birch's proposed 16-20 line/DS1 cut-off. Moreover, as described below, data provided by the incumbent LECs further confirms that Allegiance is far from the only CLEC serving these customers with self-deployed switches. The most likely reason that the Commission has not heard directly from these other carriers is that, rather than seeking to protect their market niche by regulatory redress (as Birch does here), they are out in the marketplace building their networks and competing for customers.

<sup>4</sup> See Tr. at 86; see also *Ex Parte* Letter from W. Scott Randolph, Verizon Communications, to Magalie R. Salas, FCC, at 4 (Sept. 6, 2000).

<sup>5</sup> See *Ex Parte* Letter from Gary L. Phillips, SBC Telecommunications, Inc., to Magalie Roman Salas, FCC, at 2 (July 12, 2000) ("SBC *Ex Parte*") (showing that from March through May 2000, Southwestern Bell performed 3,762 hot cuts for single line customers out of a total of 6,373 hot cuts).

<sup>6</sup> See *Ex Parte* Letter from W. Scott Randolph, Verizon Communications, to Magalie R. Salas, FCC, at 1 (Dec. 21, 2000) (public version) ("Verizon December *Ex Parte*").

losses were for customers with one or two lines.<sup>7</sup> WorldCom has taken issue with Verizon's data, arguing that it overstates the loss of small business customers because it includes lines served by UNE-P and resale.<sup>8</sup> In fact, WorldCom does not dispute that only a *de minimis* number of these customers are served by UNE-P. WorldCom's main point is that a significant percentage of the customers in question are served *via* resale. But even under WorldCom's view of the data, there are a significant number of customers served *via* self-provisioned switches. Furthermore, while not technically part of the impairment analysis, it is telling that CLECs have found it efficient to rely on resale as a means of market entry. This fact undermines the argument that unbundled switching is a necessary transitional mechanism for new entrants.

Moreover, the overwhelming majority of the customers CLECs serve using unbundled switching are residential. For example, Verizon has submitted data for Verizon-East (formerly Bell Atlantic) showing that 93% of the existing UNE-P arrangements are being used for residential customers, not small businesses. See Verizon September *Ex Parte*, Attachment at 6; Verizon December *Ex Parte* at 1. This evidence conclusively demonstrates that the *only* rational cut-off point for the availability of unbundled local switching is a residential-business split.

In addition to the fact that it is amply supported in the record, a residential-business split would alleviate concerns voiced by Birch and others regarding the operational difficulties of provisioning service to small business customers that initially order three lines but later add a fourth line, moving them out of the current unbundled switching exception.<sup>9</sup> This proposal would not only eliminate concerns about business customers requiring additional lines on a seasonal basis, but it would also ensure that competitors would continue to have access to unbundled switching, and thus UNE-P, for all residential customers.<sup>10</sup> In order to minimize service disruption, lessen the administrative costs of such a standard, and avoid a potentially unenforceable rule based on the number of lines a customer has, the Commission should adopt the more reasonable residential-business split proposed here. See UNE Remand Order, Separate Statement of Commissioner Ness at 2 (indicating that a split based on number of lines "could create customer confusion and be an administrative nightmare").

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<sup>7</sup> *Ex Parte* Letter from W. Scott Randolph, Verizon Communications, to Magalie R. Salas, FCC, Attachment at 5 (Sept. 27, 2000) ("Verizon September *Ex Parte*").

<sup>8</sup> See *Ex Parte* from Chuck Goldfarb, MCI WorldCom, to Magalie R. Salas, FCC, at 2 (Jan. 9, 2001).

<sup>9</sup> See Birch Petition for Partial Reconsideration at 8-9 (filed Feb. 17, 2000); MCI WorldCom Petition for Reconsideration at 22 (filed Feb. 17, 2000); Competitive Telecommunications Association Petition for Reconsideration at 4 (filed Feb. 17, 2000).

<sup>10</sup> Such a distinction would be easy to administer, since the Commission has already defined when a line is residential and when it is business. Compare 47 C.F.R. § 69.152(g) ("[a] line shall be deemed to be a residential subscriber line if the subscriber pays a rate for such line that is described as a residential rate in the local exchange service tariff"), with id. § 69.152(i) (a business line is one for which "the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff").

### C. MSAs Are A More Reasonable Geographic Restriction Than Density Zones.

Based on “limited evidence” presented in the UNE remand proceeding, the Commission restricted the exception for local switching to density zone 1 in the top 50 MSAs, finding that such zones most closely reflected the wire centers in which CLEC switches were deployed. UNE Remand Order ¶ 278. In so ruling, the Commission relied on evidence submitted by a single carrier, BellSouth. Id. ¶ 285. Other ILECs have since supplemented the record to demonstrate that BellSouth is unique in the way that it defines density zones. Perhaps as a result of these disparities, evidence has also been submitted demonstrating that reliance on density zones arbitrarily excludes many rate centers that are served by a significant number of CLEC switches. In light of these subsequent developments, logically and practically, any attempt to rely on zones as a geographic limitation would be, almost by definition, arbitrary and capricious. Even if density zones were defined consistently among regions, use of such zones would nonetheless continue to be improper because, as the Commission has recognized, CLECs generally base entry strategies on MSAs, not density zones. Id. ¶ 80. Because CLECs with access to collocation and the EEL can use a single switch to serve an entire MSA, there can be little doubt that MSAs are a more appropriate way of geographically defining the availability of unbundled switching for business customers. Id. ¶ 288. As discussed below, the Commission’s prior decisions further support use of the MSA as the appropriate measure of competitive entry.

As noted, evidence has been filed in the record indicating that incumbent LECs define density zones based on different criteria. In particular, BellSouth, the only carrier to submit evidence regarding the number of CLEC switches deployed by density zone, “defines density zone 1 by *exchange areas*.”<sup>11</sup> As a result of this broad definition, BellSouth’s zone 1 in the Atlanta MSA, for example, apparently includes the entire Atlanta metropolitan area as well as nearby suburbs like Buckhead.<sup>12</sup> Other ILECs, including SBC, U S West (now Qwest), and Verizon, appear to designate density zones on a noncontiguous *wire center by wire center* basis. For example, in Verizon’s region, “Baltimore City has only one central office in its rate zone 1.” Intermedia Petition at 16. Similarly, Ameritech’s density zone 1 apparently consists of a total of 17 wire centers in its entire region, while BellSouth and GTE (now Verizon) each has well over 100 wire centers within density zone 1. See Tr. at 23. In comparison, apparently only about 2% of SBC’s wire centers, or 3% of its overall access lines, are within zone 1. Id. at 5. U S West further confirms that its zone 1 is defined on a wire center by wire center basis, and that “the zone 1 area associated with an urban center in [its] region is significantly smaller than the zone 1 area associated with a comparable urban center in BellSouth’s region.” U S West Response at 8.

Evidence has also been presented that use of the zone 1 restriction improperly excludes areas of substantial CLEC competition. Specifically, Verizon has submitted evidence that the Commission’s current rule excludes no fewer than 35 rate centers in its territory alone that are served by at least four competitors’ local switches: Waltham (19 switches); Burlington, Lexington, Woburn, Quincy (14 switches each); Dover (7); Lowell (17); Billerica (10); Andover

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<sup>11</sup> U S West Response to Petitions for Reconsideration at 8 (filed March 22, 2000) (“U S West Response”) (emphasis added).

<sup>12</sup> See Intermedia Petition for Reconsideration at 16 (filed Feb. 17, 2000) (“Intermedia Petition”).

(11); Lawrence (9); Havervill (7); West Newbury (6); Allentown-Bethlehem-Easton MSA (9 of 13 rate centers served by at least 6 switches each); Wilmington-Newark (every rate center in the MSA served by at least 4 switches); Reading (12); Kutztown (6); Hamburg (5); Albany (10); Schenectady, Troy (9); Colonie, Saratoga Springs (8); Syracuse (10); Auburn (7); Onieda, Oswego (5).<sup>13</sup> This additional evidence also rebuts any claim that CLECs are not deploying switches outside of the top 50 MSAs.<sup>14</sup> Indeed, of those centers listed, only five (Waltham, Burlington, Lexington, Woburn, Quincy) are within the top 50 MSAs; the rest are in smaller MSAs. It is the height of capriciousness to find that a CLEC is not impaired in its ability to offer service without unbundled local switching in a rate center with four competitive switches that happens to be within the top 50 MSAs, but that it is impaired in a rate center with 17 switches in a non-top 50 MSA such as Lowell, Massachusetts.

Given the myriad problems with the current zone restriction, Allegiance submits that the Commission should instead adopt MSAs as the appropriate geographic carve-out. Not only are MSAs sufficiently large to make the exception meaningful, but they are defined uniformly (and by a source other than the carrier itself) from region to region. Moreover, the Commission recognized in the UNE Remand Order that the MSA is a reasonable entry market for CLECs for at least two reasons. First, the Commission believed that a CLEC, in an effort to decrease per-customer costs, would target a substantial number of business and/or residential customers in an MSA. UNE Remand Order ¶ 80. Second, the Commission found an MSA to be “a reasonable entry market because number portability is deployed on an MSA basis, and [is] available to serve a requesting carrier’s customers within these areas.” Id. ¶ 80 n.140 (citation omitted).<sup>15</sup> Coupled with the Commission’s recognition that CLECs may serve an entire MSA with a single switch, it is clear that MSAs are a more appropriate geographical unit for measuring the scope of competitive entry than density zones. Id. ¶ 288.

The Commission’s recent rulings further support this conclusion. In the Pricing Flexibility Order, for example, the Commission determined that the MSA was the appropriate geographic unit for granting incumbent LECs pricing flexibility relief.<sup>16</sup> There, the Commission concluded that “MSAs best reflect the scope of competitive entry, and therefore are a logical basis for measuring the extent of competition.” Pricing Flexibility Order ¶ 72. In adopting MSAs as the appropriate unit, the Commission expressly rejected the propriety of using wire centers as the geographic unit for pricing flexibility. Id. ¶ 74. In so ruling, the Commission

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<sup>13</sup> Bell Atlantic Petition for Reconsideration at 8-10 (filed Feb. 17, 2000).

<sup>14</sup> UNE Remand Order ¶ 282 (refusing to extend the exception outside of the top 50 MSAs, noting that the Commission lacked a “basis in the record before [it] to make such a finding because there are relatively few competitive switches outside of the top 50 MSAs”).

<sup>15</sup> While the Commission recognized that some carriers might serve smaller areas within an MSA, it stated that, to the extent that there were viable alternatives available on an MSA basis, as there would be under Allegiance’s proposal, it did “not believe that such a carrier would be impaired because the alternatives would most likely be available to serve customers located in smaller areas within the MSA.” UNE Remand Order ¶ 80 n.140.

<sup>16</sup> See Access Charge Reform, 14 FCC Rcd 14221, ¶ 72 (1999) (“Pricing Flexibility Order”).

reasoned that using such a small geographic area unjustifiably created expense and administrative burdens. *Id.* As noted, most RBOCs have established zones based on wire centers. As a result, zones suffer from the same weaknesses that led the Commission to reject wire centers in the Pricing Flexibility Order. Absent a reasoned basis for doing so, the Commission should not diverge from what has previously been held to be an appropriate geographic unit for measuring competitive entry. Adopting MSAs for the unbundled switching carve-out is easily administered; it is consistent with the Commission's decision in the Pricing Flexibility Order; and it establishes a reasonable basis for accurately measuring the availability of competitive local switching alternatives.

**II. Alternately, In Addition To Five Switching Providers In An MSA, The Commission May Require That At Least 50% Of The Serving Wire Centers In That MSA Have Four Or More Collocated CLECs.**

The Commission has expressed concern that carriers could be impaired in their ability to offer services using their own switches due to the added cost and delay of collocation.<sup>17</sup> See UNE Remand Order ¶¶ 264, 267. In particular, the Commission indicated that “collocation . . . imposes a material delay on competitive LECs that offer services using self-provisioned switches, and materially limits the scope of customers a requesting carrier may serve quickly.” *Id.* ¶ 267. To alleviate these concerns, the Commission required incumbents to provide access to the EEL as a condition of the switching exception, thereby eliminating the impairment created by the cost and delay of collocation for carriers that do not use unbundled switching. *Id.* ¶ 288. It has been suggested, however, that the EEL is often difficult to obtain as a practical matter and that it cannot be efficiently deployed to serve customers with less than DS1 capacity.

Allegiance does not believe it is necessary to require any showing other than the presence of five switching providers in an MSA (and the availability of the EEL) to qualify for the local switching carve-out. Even so, to the extent that the Commission's concerns about the cost and delay of collocation and the limitations on the use and availability of EELs remain, Allegiance alternatively proposes adding a second prong to its five switch standard. The second prong would require that an incumbent LEC demonstrate, in addition to the presence of four competitive switches and the availability of the EEL, that at least 50% of the serving wire centers in the MSA have four or more collocated CLECs. In order to avoid market disruption, all density zones 1 currently excepted from the Commission's unbundled switching requirement should be grandfathered to the extent that they are located in MSAs that do not meet this additional prong. Allegiance's proposed alternative would alleviate any concerns that the cost

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<sup>17</sup> The Commission also indicated that it was limiting the unbundled switching exception to the top 50 MSAs because it believed that “the revenue potential of serving less dense markets outside the top 50 MSAs is unlikely to outweigh the costs of collocating in these markets, and accordingly, competitors are impaired without access to unbundled local switching.” UNE Remand Order ¶ 283. Additional record evidence of extensive CLEC switch deployment in MSAs beyond the top 50, such as that presented by Verizon and discussed earlier, clearly rebuts any such concerns.

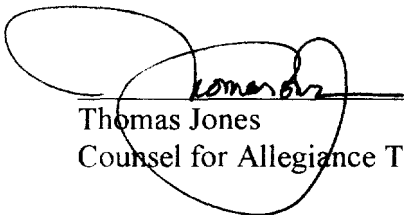
and delay of collocation might limit the ability of a CLEC to use its own switch to serve customers in a particular MSA.<sup>18</sup>

### **III. Implementation Of Allegiance's Proposal Will Be Simple And Efficient.**

Given the ease with which Allegiance's proposed rule can be implemented and the benefits that will inure from tying the law as closely as possible to the realities of the marketplace, Allegiance submits that the Commission should review the list of exempted MSAs every two years as part of its biennial review. See 47 U.S.C. § 161(a). During that review, to the extent that additional MSAs meet the carve-out criteria, the Commission should allow a nine month period for CLECs that are currently using unbundled local switching to transition affected customers.<sup>19</sup> Allegiance recognizes that, in the UNE Remand Order, the Commission concluded that it would reexamine its national list of UNEs every three years to determine whether modifications were necessary. UNE Remand Order ¶ 15. While Allegiance's proposal requires review every two years, that time frame, coupled with the nine month transition period, will largely track the Commission's three year review. Moreover, the biennial review allows CLECs to rely on the UNE-P as a transitional mechanism.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), an original and one copy of this letter are being provided for inclusion in the above-referenced docket.

Sincerely,



Thomas Jones  
Counsel for Allegiance Telecom

cc: Dorothy Attwood  
Rebecca Beynon  
Michelle Carey  
Kyle Dixon  
Jordan Goldstein  
Jonathan Reel  
Glenn Reynolds  
Deena Shetler

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<sup>18</sup> Allegiance's willingness to rely on collocation as a proxy should not in any way be construed as an assertion that the ILECs are provisioning collocation, transport, and/or unbundled loops in a manner that fully comports with their obligations under Section 251(c)(3). Even so, the appropriate response to any provisioning deficiencies is not to expand the availability of the switching element where CLECs are not impaired, but rather to require compliance with the Act and the Commission's rules.

<sup>19</sup> See UNE Remand Order ¶ 268 & nn. 528-529 (estimating that it "takes approximately six months to one year to engineer, furnish and install a switch").